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IN THE
Supreme Court of the United States

OCTOBER TERM, 1971

No. **71-564**

DISTRICT OF COLUMBIA, *Petitioner,*

v.

MELVIN CARTER, *Respondent.*

Petition for Writ of Certiorari to the United States Court of
Appeals for the District of Columbia Circuit

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**Petition for Writ of Certiorari to the United States Court of
Appeals for the District of Columbia Circuit**

Petitioner District of Columbia prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on July 23, 1971.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals has not yet been reported and is set forth in Appendix A at pages 1a through 31a. The District Court rendered no opinion, but its order dismissing the complaint against the District of Columbia set forth in Appendix B at page 1b.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 23, 1971 (Appendix C). Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED

Whether the District of Columbia, as a congressionally created municipal corporation, is a "person" within the meaning of 42 U. S. C. § 1983.

STATUTE INVOLVED

42 U. S. C. § 1983. Civil Action for Deprivation of rights.

"Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
(Emphasis added.)

STATEMENT OF THE CASE

In a complaint filed in a civil action in the United States District Court for the District of Columbia, respondent asserted that in 1968 he was assaulted by a Metropolitan Police officer who, without probable cause, beat him with brass knuckles while he was held by two other officers. Respondent further alleged that the officer's precinct captain, the Chief of Police and the District of Columbia each negligently failed to train, instruct, supervise and control the officer with regard to the circumstances in which (1) an arrest may be made, and (2) various degrees of force may be used in making an arrest.

Respondent sought to hold the officer liable for assault and battery, or for negligence in making an arrest. He sought to hold the precinct captain and Chief of Police liable for negligence in failing to give the officer training and supervision. Finally, he sought to hold the District of Columbia liable either for its own negligence in failing to train and supervise the officer, or for the torts of the officer, the precinct captain, and the Chief of Police on a theory of *respondeat superior*. In each case, respondent asserted both a common law theory of tort liability, and an action for deprivation of civil rights under 42 U. S. C. § 1983. The police officer was never found for service of process. The precinct captain and Chief of Police moved to dismiss the complaint on the grounds that it failed to state any basis for relief, and that they were protected by the doctrine of official immunity. The District of Columbia moved to dismiss the complaint for failure to state a claim and also on the ground of sovereign immunity. The District Court subsequently dismissed the complaint as to all defendants.

On July 23, 1971, a division of the United States Court of Appeals for the District of Columbia Circuit reversed the rulings of the District Court. Respecting the District's asserted tort liability, the court held that, although a municipal corporation, the District was nonetheless a "person" amenable to respondent's action for damages under 42 U. S. C. § 1983. The court also held that the District could not escape liability under the doctrine of sovereign immunity, even though the United States would be immune from liability under similar circumstances under the Federal Tort Claims Act, 42 U. S. C. § 2680(h).¹

¹ The same question, i.e., whether the policy considerations articulated in the Act preclude the subjection of the District to a tort liability wider in scope than that of the United States, is currently awaiting decision in the District of Columbia Court of Appeals in *Graves v. District of Columbia*, D.C. App. No. 5086. Under the recently enacted District of Columbia Court Reform and Criminal Procedure Act of 1970, P. L. 91-358, 84 Stat. 473 et seq., the appellate tribunal is now "the highest court of the District of Columbia." 84 Stat. 475.

On August 6, 1971, the District of Columbia filed in the United States Court of Appeals for the District of Columbia Circuit a suggestion for rehearing en banc pursuant to Rule 35 of the Federal Rules of Appellate Procedure.¹ The suggestion for rehearing en banc was denied on October 15, 1971.

REASONS FOR GRANTING THE WRIT

In ruling in respondent's favor, the United States Court of Appeals for the District of Columbia Circuit held that a municipality, and hence the District of Columbia, is a "person" within the meaning of 42 U. S. C. § 1983, to the extent that the municipality is without immunity from suit under local law. (Appendix A 19, 20.) Because the Court was of the view that the District of Columbia in this case is not immune from suit under an evolving concept of sovereign immunity,² it concluded that the District is a "person" within the meaning of 42 U. S. C. § 1983 and therefore amenable to suit for damages thereunder. This ruling cannot be squared with a controlling precedent of this Court and with many subsequent decisions of lower federal tribunals which have construed and applied this Court's rationale.

In *Monroe v. Pape*, 365 U. S. 167 (1961), this Court explicitly rejected the notion that a municipality is a person within the purview of 42 U. S. C. § 1983. In so doing, the Court reviewed pertinent legislative history and specifically noted the defeat of a proposed amendment which would have required municipalities to respond in damages in action like that involved here. 365 U. S. at 188-191. If, as the circuit court of appeals held, *Monroe* stands for the proposition that municipalities are exempt from suit under § 1983 only to the

¹ No challenge was made to the rulings of the division applicable to any party other than the District of Columbia.

² Cf. *Spencer v. General Hospital of the District of Columbia*, 138 U. S. App. D. C. 48, 425 F. 2d 479 (1969).

that they are independently protected by the doctrine of sovereign immunity, it is inconceivable that this Court would not have qualified its holding accordingly. Indeed, the various circumstances that municipalities were subject to suit in many areas at the time *Monroe* was decided persuasively indicate that this Court gave § 1983 a construction designed to impose an across-the-board rule of municipal non-liability. And in numerous post-*Monroe* decisions, lower federal courts have held that the exemption recognized in that case is applicable to governmental entities in general, whether federal, state, or local in nature. See, for example, *Accardi v. United States*, 435 F. 2d 1239, 1241 (3rd Cir., 1970); *United States ex rel. Gittlemacker v. County of Philadelphia*, 413 F. 2d 84, 86 (3rd Cir., 1969); *Dodd v. Spokane County, Washington*, 393 F. 2d 330, 334 (9th Cir., 1968); *Bennett v. Gravelle*, 323 F. Supp. 203 (D. Md., 1971), and cases cited at 111; *Tao Baja Development Corp. v. Garcia Santiago*, 52 F. Supp. 899 (D. Puerto Rico, 1970), and cases cited at 90. See also Note: *Civil Rights - School Officials Not Persons For Purposes of Section 1983, Regardless of Relief Sought*, 24 Southwestern L. J. 360 at 362 (1970); Comment, *Injunctive Relief Against Municipalities Under Section 1983*, 119 U. Pa. L. Rev. 389 at 390 (1970). Consequently, whether the District be viewed as a municipality (*Metro-politan R. Co. v. District of Columbia*, 132 U. S. 1 (1889)), or as an agency of the United States in the sense that it has been created by Congress to perform congressionally assigned duties of a local nature (cf. *Penn Bridge Co. v. United States*, 29 App. D. C. 452, 457 (1907)), it is clearly not a "person" within the meaning of § 1983, *supra*.

Furthermore, the thesis of the circuit court of appeals that § 1983 applies to municipalities if they are not immune from suit under the doctrine of sovereign immunity cannot be squared with a recent decision of the Ninth Circuit Court of Appeals which holds that the *Monroe* rationale does not cease to be applicable where the governmental

unit involved may be compelled to respond in damages under the laws of the state in which it is located. See *Brown v. Town of Caliente*, 392 F. 2d 546 (9th Cir., 1968). See also *Patrum v. City of Greensburg*, 419 F. 2d 1300, 1302 (6th Cir., 1969); *Wilcher v. Gain*, 311 F. Supp. 754 (N. D. Cal., 1970). Such a plain conflict in the recent decisions of two circuit courts of appeals manifestly provides additional reason for the invocation of this Court's certiorari jurisdiction, even apart from the apparent conflict of the ruling below with this Court's ruling in *Monroe*.

It is true, as the circuit court of appeals recognized, that, at the time the action was filed, respondent was entitled to proceed against petitioner in the United States District Court for the District of Columbia on a common-law theory, in addition to invoking the Court's jurisdiction under 42 U. S. C. § 1983. But the recently enacted District of Columbia Court Reform and Criminal Procedure Act of 1970, P. L. 91-358, *supra*, is designed to transfer to the District of Columbia Superior Court jurisdiction over local actions based on the former theory. See 84 Stat. 484-485. If the decision below is allowed to stand, however, respondent and many others may continue to seek damages against the District in the United States District Court for the District of Columbia Circuit in myriad types of civil rights actions under 42 U. S. C. § 1983. In addition, the decision below will afford clear precedent to those seeking to involve other municipalities (to the extent that they lack immunity from suit) in civil rights actions for damages in other federal courts contrary to the essential thrust of this Court's ruling in *Monroe v. Pape*, *supra*.

Clearly, therefore, the novel and highly questionable ruling of the United States Court of Appeals for the District of Columbia Circuit that the District of Columbia is a "person" within the purview of 42 U. S. C. § 1983 is of sufficient importance to warrant review by this court.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the severe adverse impact of the ruling in the instant case upon the administration of justice in the District of Columbia, its potential impact elsewhere and its clear conflict with a holding of this Court as well as with holdings of a host of lower federal tribunals fully warrant, indeed compel, review by the Supreme Court of the United States. The petition for writ of certiorari should, accordingly, be granted.

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